

**BOARD OF APPEALS CASE NO. 5361**

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**BEFORE THE**

**APPLICANT: Mr. & Mrs. William Wiley**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct an addition  
within the required rear yard setback;  
407 Dunfield Court, Joppa**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 5/21/03 & 5/28/03**

**HEARING DATE: July 16, 2003**

**Record: 5/23/03 & 5/30/03**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Carson Wiley and Sandra Wiley, are requesting a variance, pursuant to Ordinance 6, Section 10.05 of the Harford County Code, to construct an addition within the required thirty-five (35) foot rear yard setback (proposed 28 foot) in an R3/Community Development District.

The subject parcel is located at 407 Dunfield Court, Joppa, Maryland 21085 in the First Election District, and is more particularly identified on Tax Map 69, Grid 1C, Parcel 158, Lot 4. The parcel contains approximately 8,400 square feet, more or less.

The Applicant, Carson Wiley, appeared and testified that he, and the Co-Applicant, Sandra Wiley, are the owners of the subject property. He stated that he has read the Department of Planning and Zoning Staff Report, and has no changes or corrections to the information contained therein.

Mr. Wiley described his property as a rectangular shaped lot, which is wider in the rear than in the front. The rear property line is curved because the lot is located on a court. The property is improved by a one-and-a-half-story, bi-level dwelling, an attached one-car garage, and an attached rear deck. The existing dwelling was constructed with a front yard setback 7 feet greater than the required minimum. The rear of the property backs to a wooded area, designated as community open space, and is not visible from Joppa Farm Road.

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The Applicant stated that he proposes to construct a two-story 16 by 18 foot addition on the right rear of the existing dwelling. The proposed addition would be 28 feet from the property line at its closest point. Mr. Wiley testified that, due to the architecture of the existing dwelling, the shape of the property, and the placement of the existing home 7 feet behind the setback line, the proposed location is the only practical place to locate an addition on the property. The Applicant also stated that he proposes to move the existing rear deck, to the right side of the house, causing an encroachment of approximately 7 feet into the required rear yard setback.

The witness next testified that there are other homes in the Joppatowne area, with similar additions. The proposed addition will be similar in size, and appearance, to those found on other homes within the neighborhood, and will also be compatible with the existing dwelling. Mr. Wiley produced drawings depicting side and rear views of the proposed addition (Applicant's Exhibits 1 & 2). He also produced a drawing showing the specification details for the proposed addition (Applicant's Exhibit 3).

Mr. Wiley testified that, in his opinion, the granting of the requested variance will not have any adverse impact on neighboring properties. He stated that the addition will be compatible with other properties in the neighborhood, and reiterated that it will not be visible from Joppa Farm Road. In addition, the Applicant indicated that the proposed construction would be 30 feet from the nearest dwelling.

The Department of Planning and Zoning recommended approval of the subject request in its June 24, 2003 Staff Report, stating:

"The Department finds that the subject property is unique. The dwelling was located 7 feet behind the setback line, which reduces the usable area of the rear yard. The lot backs up to a wooded berm, which screens the dwelling from Joppa Farm Road. This area is community open space (Attachment 10). The proposed addition is consistent with other structures in the area. The request, if approved, will not adversely impact the adjacent properties or the intent of the Code."

No witnesses appeared in opposition to the requested variance.

**CONCLUSION**

The Applicants, Carson Wiley and Sandra Wiley, are requesting a variance pursuant to Ordinance 6, Section 10.05 of the Harford County Code, to construct an addition within the required thirty-five (35) foot rear yard setback (28 foot proposed) in a R3/Community Development District. Ordinance 6, Section 10.05 of the Harford County Code requires a thirty-five (35) foot rear yard depth for a one-and-one-half story home, located on a 7,500 square foot lot.

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, *supra*, at 721. If the subject property is unique, the trier of fact may proceed to the second prong of the test. The second prong involves a determination of whether literal enforcement of the zoning ordinance with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The basic shape of the property is rectangular, however, the rear property line is curved, and the lot is wider in the rear than it is in the front. In addition, the existing dwelling was constructed 7 feet behind the required 25 foot building setback line, thereby reducing the amount of usable rear yard space.

The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty for the Applicants. There are other homes in the neighborhood with similar additions. If the requested variance is not granted, the Applicants will be unable to construct an addition to their home, and will therefore be denied property rights commonly enjoyed by other homeowners in his neighborhood. In addition, the bi-level construction of the existing home makes the proposed location the only practical place for the construction of an addition to the dwelling.

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest. The proposed construction is compatible with both the existing structure, and with other properties and additions in the neighborhood. The rear yard of the residence backs to a bermed, area of wooded open space, which screens the area from Joppa Farm Road.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date JULY 29, 2003

Rebecca A. Bryant  
Zoning Hearing Examiner